UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.121
7 December 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 121st MEETING

Held at the Palais des Nations, Geneva...
on Tuesday, 10 November 1992, at 3.00 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.121/Add.1.

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GE.92-14415 (E)

The meeting was called to order at 3.20 p.m.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. The CHAIRMAN thanked the Under-Secretary-General for Human Rights for taking the time to address the Committee despite all the urgent work he had to do.

2. Mr. BLANCA (Under-Secretary-General for Human Rights) said that he and his colleagues were indeed very busy. It could even be asked whether the available structures and resources would be enough for any contingency that might arise. Where human rights were concerned, the United Nations could be called on unexpectedly at any time. For example, he had recently had to go at short notice from Geneva to Georgia and the Director of the Centre for Human Rights had had to go to Latvia in a great hurry. Major crises arose without warning and, recently, it had been necessary to respond immediately in totally unexpected situations, despite an already extremely heavy workload. All such travel, and the drafting and publication of the related reports, cost a great deal and, soon, the United Nations might no longer be able to meet such expenses.

3. The Committee against Torture, which also had an enormous amount of work, was in no better a position to do that work satisfactorily, not because the members were not fully assuming their responsibilities, for they were all enormously dedicated, but because of the shortage of financial resources. He was particularly dismayed that the international community was not capable of raising even modest funds to help the victims of torture. As a matter of fact, the United Nations had only the ridiculous amount of $10 million at its disposal to solve increasingly serious and widespread human rights problems. All in all, the Centre for Human Rights had to carry out its work with about 50 experts and as many persons again in support services. Although it should not operate like a business, it had to have the necessary resources so that it could respond to all the new demands being made of it without neglecting its other tasks.

4. Because of those circumstances, he had had to forgo some trips and entrust them to his colleagues, but he had recently gone to Tunis to attend the regional preparatory meeting for the World Conference on Human Rights, which had been particularly welcome, since the meetings that were to be held in Asia and Latin America had had to be postponed until 1993. It had been very successful and had enjoyed the broad-based participation of States, non-governmental organizations and national human rights institutions; that was all the more encouraging, since the African continent was now facing major difficulties, and not only in the field of human rights. No more than a handful of countries currently enjoyed economic and social stability and peace in Africa, where problems of the North were radically different from those of the South. Human rights were matters of great concern, in many places, partly, perhaps as a result of economic, social and political problems. Human rights violations could be massive and at other times selective, and various unfortunate episodes had been known to occur. The optimism of a few years before was now gone. That had been a time when everyone had been proclaiming the relentless march of freedom and democracy and predicting a radiant future under the protective umbrella of the Bretton Woods institutions, which would

guarantee the economic and social happiness of peoples. The actual situation was quite different, and it would take a great deal of courage to carry out the tasks that lay ahead.

5. The Committee against Torture was responsible for combating a particularly abominable evil found in one form or another in nearly every country in the world. He had been made aware of that problem at an early age and deeply regretted that more effective assistance was not being given to the victims of torture simply because it had not been possible to raise the modest funds that were needed.

6. The report of the Secretary-General on the work of the organization, which had recently been submitted to the General Assembly, emphasized that, while standards and procedures based on the International Bill of Human Rights existed for normal situations, the United Nations had not been able to act effectively to bring to an end massive human rights violations. Faced with the barbaric conduct which filled the news media today, the United Nations could not stand idle or indifferent. The report thus suggested that the possibility should be considered of exploring ways of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action.

7. In the report, the Secretary-General also referred to the prevention of human rights violations. An impressive quantity of information on human rights was already available within the United Nations system submitted by Governments, non-governmental organizations and individuals to committees, commissions, the Secretary-General or various other bodies. The challenge was now to bring such information together in a focused way so as to understand complex situations better and thus be in a position to suggest appropriate action.

8. Since the Committee's seventh session, the Commission on Human Rights had held the first special session in its history in August 1992 to consider the situation of human rights in the former Yugoslavia. It had adopted a resolution appointing Mr. Mazowiecki, the former Prime Minister of Poland, as Special Rapporteur to investigate the situation. The Special Rapporteur had immediately gone to Yugoslavia and submitted an initial report to the members of the Commission on his return. He had gone back to the former Yugoslavia in October, accompanied, among others by Mr. Kooijmans, Special Rapporteur of the Commission on Human Rights on the question of torture. His second report on the human rights situation in the former Yugoslavia had been published on 27 October 1992.

9. It should also be pointed out that, at its latest session, the Human Rights Committee had considered the reports it had requested urgently from Bosnia and Herzegovina, Croatia and Serbia and Montenegro on the situation of civil and political rights in the former Yugoslavia. The Committee of Experts set up by the Security Council to look into violations of international humanitarian law and of the Geneva Conventions in the former Yugoslavia had also begun its work and its secretariat would be based in Geneva.

10. With regard to the machinery for implementing the Convention against Torture, he recalled that, on 9 September 1992, the States parties to the Convention had held a conference to consider an amendment to the provisions of the Convention which had been proposed by Australia and was designed to transfer the full funding of the implementation of the Convention, for which States parties had been responsible, to the regular budget of the United Nations. The proposal had been adopted unanimously by the Conference of the States Parties and, at its current session, the General Assembly would consider the implications of the amendment for the United Nations programme budget. Then, in accordance with article 29 of the Convention, the amendment would enter into force when two thirds of the States parties had notified the Secretary-General that they had accepted it. It was worth pointing out that, since the Committee's last session, the number of States parties had risen from 65 to 70, the 5 new signatories being Cambodia, Cape Verde, Croatia, Latvia and Seychelles.

11. With regard to preparatory activities relating to the World Conference on Human Rights to be held in June 1993, the third session of the Preparatory Committee, at which the Committee against Torture had been represented, had taken place in Geneva from 14 to 18 September 1992. He had already mentioned the regional meeting which had been held in Tunis from 2 to 6 November 1992. The two other regional meetings would take place in San José de Costa Rica and Bangkok. The fourth session of the Preparatory Committee would be held in Geneva in March 1993. The secretariat was currently preparing six papers covering the objectives set by the General Assembly in its resolution 45/155.

12. The chairpersons of human rights treaty bodies had met for the fourth time in Geneva in October 1992. They had considered matter relating to the coordination of the work of various committees and cooperation to find ways of solving problems which hampered the smooth operation of procedures, such as delays in the submission of reports and financial difficulties. They had also discussed the question of reservations to certain instruments. The meeting had been the Committees' last opportunity to coordinate their activities before the World Conference.

13. The Working Group set up by the Commission on Human Rights to look into cases of arbitrary detention or other forms of detention which were incompatible with relevant international standards had held its fourth session from 18 September to 2 October 1992 in Geneva. It had adopted 40 decisions on the basis of allegations which had been received concerning some 200 persons in 16 countries.

14. Mr. Kooijmans, the Special Rapporteur of the Commission on Human Rights on the question of torture, was still receiving an alarming number of communications concerning cases of torture. Since the beginning of 1992, he had made a total of 50 urgent appeals to the Governments of 35 countries concerning persons who had allegedly been or were feared to have been subjected to torture. He would give detailed information on his activities in his next report to the Commission on Human Rights which would be published in January 1993.

15. He had already said he regretted the fact that the United Nations Voluntary Fund for Victims of Torture was having financial problems. In 1991

and 1992, the Fund had financed about 100 projects aimed at helping torture victims deal with the consequences of the violence they had suffered, with the assistance of specialists. Unfortunately, since requests for assistance had exceeded $3 million, the Board of Trustees of the Fund had been forced to recommend in April 1992, that the Secretary-General should cut its subsidies by more than half. The Chairman of the Board of Trustees had informed the Committee of the situation and there was no doubt that the Committee would do everything in its power to encourage States to contribute to the Fund.

16. In 1992, the members of the Committee had taken part in training courses organized by the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights. For example, Mr. Sorensen had taken part in a course on human rights and the administration of justice which had been held in Bucharest in October 1992, and which had been intended for law enforcement personnel, prison staff and members of the Romanian armed forces. Mr. Burns had taken part in a course in Tirana in November 1992 for Albanian civil servants.

17. The open-ended Working Group set up by the Commission on Human Rights to prepare a draft optional protocol to the Convention against Torture had met for the first time from 19 to 30 October 1992 in Geneva. Some 50 countries and the most active non-governmental organizations working to combat torture had taken part in the work of the Working Group, which was chaired by Mrs. Odio Benito, the Minister of Justice of Costa Rica. Mr. Voyame had been invited by the Working Group to take part in one of its meetings, at which he had been asked questions, in his capacity as Chairman of the Committee against Torture, on the relationship between the provisions of the draft protocol and the activities of the Committee. Other experts, including Mr. Kooijmans and Mr. Bernheim, a member of the European Committee for the Prevention of Torture, had also been invited by the Working Group. It had thus heard valuable testimony that should help it in carrying out its task. During its first session, the Working Group had decided on its methods of work and identified and discussed the substantive issues which would have to be taken into consideration and settled during the drafting of the final text of the protocol. At the end of the session, it had adopted a report which would be submitted to the next session of the Commission on Human Rights. The report and any decision by the Commission on the draft protocol would be communicated to the Committee as soon as possible.

18. He wished the Committee every success in carrying out its task and pledged his full support. He would be available at any time to take part in its work, if necessary.

19. The CHAIRMAN said that the Committee had listened with great interest to the often distressing, but sometimes encouraging information provided by the Under-Secretary-General for Human Rights. He particularly welcomed the fact that the financing of the Committee against Torture would henceforth be more stable, but regretted that the United Nations Voluntary Fund for Victims of Torture was suffering from a shortage of funds. Whenever possible, the Committee would encourage States to contribute to the Fund.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Afghanistan (CAT/C/5/Add.31) (continued)

20. At the invitation of the Chairman, Mr. Nohmat, Mr. Noori, Mr. Akrami and Mr. Mokhtarzada (Afghanistan) took places at the Committee table.

21. Mr. NOHMAT (Afghanistan) said that, because time was short, he would not be able to give detailed replies to all the questions which had been asked. He would nevertheless give brief replies to about 15 basic questions.

22. Since the Islamic State had been restored in Afghanistan, torture as defined in the Convention was not practised, not only because it was prohibited by the Convention and the Penal Code, but also because it was contrary to Islamic law. The legislation mentioned in the report was still valid, but it was likely to be amended following the adoption of the new Constitution. Furthermore, the statement made by the Ministry of Justice with regard to persons who consumed alcohol had been misconstrued. Under Islamic law, such persons were liable to the specific penalty applicable under the relevant category of the hudud, namely, flogging, and not to capital punishment.

23. A recently formed committee of jurists had been given the task of determining whether the legislation in force was in line with Islamic precepts. The organization and powers of the courts had not been altered and the principle of the separation of powers was fully respected. At present, the courts applied the Shari'a laws, but not very strictly. He recalled that there were three categories of penalty in Islamic law: hudud (specific penalties), qisas (lex talionis) and Tàzir (discretionary penalties). Condemned persons were entitled to request a pardon or reprieve, but the head of State was not at liberty to grant pardons to criminals liable to hudud penalties. Since such penalties were specified by God it was not for human beings to show clemency for persons guilty of crimes for which those penalties were applicable.

24. He also pointed out that the modern legal system was fully in accordance with the Shari'a and the rules of international law. Crime statistics were not kept in Afghanistan. Foreigners and nationals were equal before the law and refugees could return freely to their countries of origin. The question of extradition would be dealt with in future legislation and any suggestions by the Committee were welcome. The former Constitution had been repealed.

25. The courts determined the nature and amount of compensation for loss or injury on the basis of the Islamic precept that no one had the right to cause injury to others and no one was obliged to suffer the consequences of injuries inflicted upon him. In the event of any conflict between internal law and the Convention, moreover, the Convention took precedence. There was a system of legal aid or legal assistance, but it was somewhat unsatisfactory, mainly because Afghanistan was an underdeveloped country which had considerable difficulties. However, the Afghan authorities would do their best to improve the system in the light of recommendations made by the members of the Committee.

26. He also pointed out that a state of siege had not been officially decreed and that, following the general amnesty all prisoners, including criminals, had been released. There were no longer any prisons in Afghanistan and any interested foreigners could visit the small detention centres. Judges were appointed by the head of State, who also decided on their promotion on the basis of reports made by the Minister of Justice.

27. He pointed out that the current leaders of Afghanistan would respect all conventions to which the country was a party and would submit a more detailed report to the Committee at one of its next sessions.

28. Mr. SORENSEN (Country Rapporteur) thanked the head of the Afghan delegation for the replies he had given. In view of the enormous changes Afghanistan had been going through in the past few months, he did not think that the discussion should be continued on the basis of the report. He therefore suggested that, at the Committee's next session, the Government of Afghanistan should submit a report combining the information required in an initial report and in a periodic report, such reports being drafted according to different guidelines.

29. Mr. MIKHAILOV said that it might be better to request the Government of Afghanistan to submit a supplementary, not an initial, report, combined with a periodic report, sometime in the not too near future, since judicial structures and the legal system were still not firmly in place in Afghanistan.

30. The CHAIRMAN said that, in view of the situation in Afghanistan, it was important for the Government to prepare a new report which would serve as an initial report, a supplementary report and a periodic report. The report should contain general information on the country, its legal structure and how it was combating torture, as well as any relevant information on the situation as it stood at the time of writing of the report.

31. Mr. SORENSEN, referring to the deadline for the submission of the report, said that he would like it to be considered by the Committee before the end of 1993 so that the members of the Committee whose term of office expired then would be able to continue their dialogue with the Afghan delegation. He also pointed out that the Afghan authorities could request assistance from the Centre for Human Rights, in the form of seminars, for example, even before the report in question was submitted.

32. Mr. BEN AMMAR said that he wished the new regime in Afghanistan good luck and success in its endeavours. For that regime, as for several other States, the main problem was to reconcile the principles of the universality of human rights, as provided for in United Nations instruments, and the specific characteristics of Islam. The problem of reconciling the two approaches had also arisen at the Islamic Conference, which would like to adopt an Islamic declaration of human rights. The draft of that declaration was regarded as falling short of what the representatives of all of mankind had adopted so far.

33. His view was that, in addition to the assistance of the advisory services of the Centre for Human Rights, the Government of Afghanistan might be able to benefit from the assistance of several non-governmental organizations which

had paid particular attention to the problems of the compatibility of universal standards and Islamic law.

34. Mr. EL IBRASHI pointed out that the new report which would be submitted by the Government of Afghanistan should include replies to the questions asked by the members of the Committee. As an Egyptian national, moreover, he could say that Egyptian institutions and, in particular, Al Azhar University, would also be able to give the Government of Afghanistan assistance in implementing Islamic law in different areas of the law, for that was a very difficult question and one that was often misunderstood.

35. The CHAIRMAN said that the Centre for Human Rights was at the disposal of the Government of Afghanistan to help it draft its report and to provide technical assistance in the field of human rights. He recommended that the representatives of the Centre for Human Rights should take account of any requests by the Government of Afghanistan and comply with them in so far as possible.

36. With the consent of the head of the Afghan delegation and if there were no objections from the members of the Committee, he said that the Government of Afghanistan would submit a new report at the end of June 1993 which would be considered by the Committee at its November 1993 session. He thanked the members of the Afghan delegation for their cooperation.

37. Mr. Nohmat, Mr. Noori, Mr. Akrami and Mr. Mokhtarzada (Afghanistan) withdrew.

The public meeting rose at 4.25 p.m.